

IN THE COURT OF THE TRANSPORT TRIBUNAL

LONDON FARES AND MISCELLANEOUS CHARGES DIVISION

In the matter of the London Fares (British Railways) Order 1968

1968 No. 2

British Railways Board

Applicants

Reasons for Decision of the Tribunal

This application for an Order under s.45 of the Transport Act 1962 (hereinafter referred to as "the Act of 1962") to replace the London Fares (British Railways) Order 1966 (hereinafter referred to as "the Order of 1966") was made on 30th May 1968. The application has annexed to it a draft Order which would permit increases in the Applicants' passenger fares for journeys wholly within the London Passenger Transport Area. The yield of these increases is estimated by the Applicants to be £2.5m. in a full year. This would embrace the revenue estimated at £0.4m. which could have been derived from increases in ordinary fares authorized by the Order of 1966, but not yet brought into operation. In addition the Applicants propose to increase their revenue by a further £0.4m. by exercising the power conferred by the Order of 1966 to withdraw certain concessionary half and two-thirds season ticket rates for juveniles. In all, the Applicants seek to increase their revenue by £2.9m. in a full year.

By the combined effect of s.23(4) of the Act of 1962 and s.1(1) of the Transport Finance Act 1966 the Applicants have until 31st December 1968 a duty so to conduct their business as to place themselves at the earliest possible date in such a position that their revenue will be, and continue to be, not less than sufficient for making provision for the meeting of charges properly chargeable to revenue, taking one year with another. From 1st January 1969 the Applicants will have imposed upon them by s.18(1) of the Act of 1962 the more onerous duty so to conduct their business as to secure that their revenue is not less than sufficient for making provision for the meeting of charges properly chargeable to revenue, taking one year with another.

In exercising our power to make an Order under s.45 of the Act of 1962, we are required to do nothing which will in our opinion prevent the Applicants from levying charges which make a proper contribution to the discharge of their financial duty, taking into account their present circumstances and future prospects and any directions given to them by the Minister of Transport under that Act. We are also required by s.23(1) of the Prices and Incomes Act 1966 to have regard, in addition to and so far as consistent with the matters which we are required to take into account under the Act of 1962, to the considerations set out in the Schedule to the Prices and Incomes (General Considerations) Order 1968 (S.I. 1968 No. 816). For the reasons stated in the reasons for our decision in *In the matter of the London Fares (London Transport) Order 1968* (1968, No. 1), it is not necessary for us to consider the wording of these considerations in detail.

After making an estimated apportionment of the revenue and working expenses relating to their undertaking as a whole between their London lines, which are the subject of this application, and the remainder of their undertaking, which is not, the Applicants estimate that the charges which they seek power to levy would produce a margin of £4.9m. available to meet interest and reserves. Out of this they have to pay £3.7m. interest, leaving a margin for reserves of £1.2m.

Mr. D. Lazarus, who represented the Travellers Associations' Joint Committee, argued that in considering this estimate we ought to have in mind that it did not fully take into account the Applicants' future prospects in that no allowance was made in respect of the effect upon the Applicants' position of certain financial provisions contained in the Transport Bill at present before Parliament. In our view, it is wholly beyond our powers to do this. It would involve forming an estimate of the chances of the Bill passing through all its stages to the Royal Assent and speculating upon the form in which the Bill might attain that goal. Matters of this sort are outside the purview of this, as of any other court. The basis upon which we have to proceed is that on and from 1st January 1969 the Applicants' financial duty will be more onerous by reason of the expiration of the temporary alleviation given by s.23(4) of the Act of 1962.

Mr. Lazarus then argued that the Applicants' estimate of the margin for reserves of £1.2m. was too low by £1.6m.

because a number of the items upon which it was based were incorrect in certain respects which were explained to us by Mr. J. H. Whitaker, a chartered civil engineer, whom he called as a witness, and set out in detail in his Exhibit JHW 4. We hope that neither Mr. Lazarus nor Mr. Whitaker will feel that we have not given these matters careful consideration if we say compendiously that we accept the answers to these points which were given by Mr. Fay in his closing address for the Applicants. The effect of this would be to increase the estimate of £1.2m. by less than £0.03m., which is insignificant in a calculation based upon figures rounded to £0.1m.

We therefore accept the Applicants' estimate that the charges which they seek power to levy would produce a margin of £4.9m. available to meet interest and reserves. Such a margin falls within the limits (£5.2m. to £4m.) which we have accepted in previous applications made by the Applicants under the Act of 1962, and we are of opinion that a fare structure which would produce a margin of this order is required, if practicable, to make a proper contribution to the discharge of the Applicants' financial duty.

We next turn to consider the proposals contained in the draft Order. At the time when the application was made there was still pending before the court an application made by the London Transport Board on 12th March 1968. The scales of maximum second-class season ticket rates sought by the Applicants and the London Transport Board were identical, and the scales of maximum second-class single fares by railway were identical up to 20 miles. By the London Fares (London Transport) Order 1968 (hereinafter referred to as "the Order of 1968"), confirmed on 24th June 1968, we allowed the scale of maximum second-class season ticket rates sought by the London Transport Board, but we modified in certain respects the scale of maximum second-class single fares by railway sought by that Board. The differences between the maximum fares authorized by the Order of 1968 and those contained in the draft Order in these proceedings are conveniently set out in Exhibit JP 1, produced by Mr. J. H. Penney, the Applicants' Passenger Officer. The Applicants, however, have not modified their application in the light of the provisions of the Order of 1968.

As we see it, our duty is now to consider these matters in relation to the Applicants *de novo* in the light of the evidence adduced before us in these proceedings. However, in considering the present application we have to have regard to the context in which the Order applied for will have to operate, and part of that context is the Order of 1968. Nevertheless, we are not bound to follow our decision in *In the matter of the London Fares (London Transport) Order 1968* should we consider the evidence adduced before us in this case to be more cogent than that adduced before us in that case.

After applying a discount for assumed loss of traffic due to the increases, it is estimated that the increases proposed in the season ticket rates would produce £1.3m. in a future year. We see no reason to depart from the view which we expressed in *In the matter of the London Fares (London Transport) Order 1968* that this is a reasonable scale. Having regard to the Applicants' clear need for additional revenue from their London lines, we have incorporated this scale in our Order.

When we turn to the proposals regarding single fares, the first matter to be considered is the proposal to increase the fares for journeys not exceeding one and two miles from 4d. and 8d. to 6d. and 1s. 0d. respectively. The corresponding fares in the Order of 1968 are 5d. and 9d. Mr. Penney put forward the view that the proposed disparities between the fares of the Applicants and those of the London Transport Board would be desirable in themselves, because they would tend to encourage some travellers on the Applicants' trains, particularly between Charing Cross and Waterloo and between Cannon Street and London Bridge, to transfer to alternative services provided by the London Transport Board, with a consequential reduction in congestion on the Applicants' trains and corresponding benefit to the Applicants' passengers travelling longer distances. We find it difficult to

take this point seriously, for it can have formed no part of the basis of the application, which was that the fares of the Applicants and those of the London Transport Board should be identical at these short distances. The original purpose of the proposals relating to the one-mile and two-mile journeys must have been to obtain more revenue. Indeed, Mr. Pentney said his main reason for objecting to low fares for these short journeys was that the terminal expenses were quite disproportionate to the value of the journeys actually made. At the 1966 fare levels these journeys are estimated to produce revenue in a future year of £238,000 at one mile and £900,000 at two miles, that is about 7 per cent of the Applicants' total ordinary fares from London journeys. This is by no means an insignificant contribution towards enabling the Applicants to comply with their statutory obligation. Taking into account the large percentage increase which the Applicants' proposals would involve, the fact that the corresponding maximum fares under the Order of 1968 are only 3d. and 9d., and the effect on the Applicants' revenue if adoption of their proposals were to cause a material diversion of traffic from their trains, we have come to the conclusion that the course which would have the more beneficial effect upon the Applicants' revenue at the present juncture would be to increase the fares for one and two miles to 5d. and 9d. respectively.

We now turn to the single fares sought for distances beyond two miles. Up to 20 miles these are identical with those applied for by the London Transport Board. Instead of an orderly progression of increases at each mile, this scale is "coarser", so that the fares are grouped in two-mile and, in one case, three-mile stages. The object of this "coarsening" is not so much to raise revenue as to facilitate by the installation of machines savings in the costs of issuing tickets, thus reducing the employment of booking office staff. On the evidence adduced by the London Transport Board we took the view that the increased costs which would be imposed on some passengers by forcing them to pay for substantially longer journeys than they in fact took were not justified by the advantages to be obtained, and we accordingly "refined" the scale to a certain extent by introducing into it 3d. "jumps" instead of 6d. ones. Exhibit JP 1 shows that the scale which we thereby produced is identical with the scale at present being applied by the Applicants up to 10 miles and with the scale which the Applicants are authorised to apply up to 12 miles. At some distances beyond 10 miles the Applicants are already authorised under the Order of 1966 to charge fares higher than those which they are at present charging and higher than those which the London Transport Board are authorised to charge under the Order of 1968. By the consistent application of the principle of increasing the fares in two-mile stages the Applicants have produced a scale which at some distances over 12 miles is lower than the scale authorised under the Order of 1966.

The evidence adduced by the Applicants in support of their "coarser" scale differed from that adduced by the London Transport Board. In the case of the London Transport Board the object was said to be to facilitate the use of machines operated by 6d. pieces, but a system of fare collection based upon the 6d. unit would necessarily go upon the introduction of decimal currency in 1971, and the Board's witness did not know what would happen then. The Applicants' machines are not specially adapted to be operated by 6d. pieces. Some will be relatively inexpensive machines with short working lives, which will be put out of use on decimalisation, while others will operate with a variety of combinations of coins, being also readily adaptable to decimal currency. Furthermore, one machine will issue tickets of several different denominations. The Applicants desire to have a scale proceeding in 6d. "jumps" has nothing to do with increasing the use of the now obsolescent 6d. piece. The attraction of this scale to the Applicants is simply that it is "coarser" than that at present authorised and that, as a result of the scale being "coarser", the number of denominations of tickets which the machines will be required to issue will be correspondingly reduced, thus effecting a reduction in the number of machines which will be required at any given station. However, although the Applicants are not particularly concerned with the 6d. piece as such, it would be an advantage to them to have fares payable in the smallest number of the coins at any time current in order to limit the number of change-giving machines. Thus a fare not rounded off to 6d. requires a machine to change copper-nickel coins into pennies, since the Applicants' new machines, while having the advantage of issuing several denominations of tickets, do not give change.

We find this argument for a "coarser" scale more acceptable than that put forward by the London Transport Board. Nevertheless, as we have remarked, a "coarser" scale is

disadvantageous to some passengers, and it can only be justified if in the long term it would lead to economies which would result in benefits to passengers in general by an overall reduction in fares or at least by the limitation of further increases. Mr. Pentney gave as an example of the economies that could be achieved particulars relating to nineteen stations on the North London line from Broad Street. He said that on the existing scale of charges twenty-eight machines would be required, fourteen being of the 6-way type and fourteen of the 24-way type but on the proposed scale of charges five of the 24-way type could be saved. This would result in a saving of £3,000, or about 20 per cent. Furthermore, the booking clerks would be withdrawn from most of the stations on the line, producing a total saving of £50,000 a year in ticketing costs.

On the other hand, it has to be borne in mind that the complete acceptance of the scale sought by the Applicants would mean that some of the Applicants' maximum fares would be higher than the maximum fares chargeable by the London Transport Board for journeys of the same lengths. In the case of journeys up to 10 miles this would be a departure from the assimilation which prevailed before the recent applications were made. The non-application of the principle of assimilation to longer journeys is justifiable on the ground that the service provided by the Applicants in respect of such journeys is in general a faster service than that provided by the London Transport Board, so that the passenger can reasonably be expected to pay more for it. We are not satisfied, however, that this consideration applies to shorter journeys, such as those of ten miles or less.

We have come to the conclusion that the desirability of having a common fare scale at the shorter distances outweighs any advantage which would accrue to the Applicants from a "coarser" fare scale. We have, therefore, applied to journeys up to 10 miles the scale contained in the Order of 1968.

So far as journeys of over 10 miles are concerned, we have to choose between two conflicting arguments put forward on behalf of the Applicants. On the one hand, Mr. Pentney's evidence was directed to showing that the adoption of the whole of the fare scale set out in the draft Order would be advantageous to the Applicants for the reasons already summarized. On the other hand, Mr. Fay in his closing speech, envisaging the possibility that we might decide to apply the scale contained in the Order of 1968 to journeys up to 10 miles, said that it would be unfair to the Applicants to do this and at the same time to apply to the longer journeys the scale set out in the draft Order, since many of the fares in that part of the scale are lower than the fares which the Applicants are already authorised to charge under the Order of 1966. This latter scale, however, not only contains "jumps" at each mile, but also contains many fares involving the use of pennies, and so has neither the long-term advantage of a reduction of the number of ticket denominations nor the short-term advantage of the use of 6d. pieces. Although we are satisfied on Mr. Pentney's evidence that, so far as the Applicants' undertaking is concerned, the "coarser" fare scale would have certain advantages, we have come to the conclusion that it would not be right for us now to fix lower maximum charges than we fixed in the Order of 1966. By fixing maximum charges for the longer distances at the same level as those in the Order of 1966 we are not precluding the Applicants from "coarsening" their fare scale in respect of those distances. To do so would involve rounding down some of the fares, but it will be for the Applicants to choose whether they prefer the maximum fares or the advantages of a "coarser" scale.

Our decision to apply to the longer journeys on the Applicants' lines a higher fare scale than that applicable to the lines of the London Transport Board makes it necessary to consider separately the fares on the Applicants' Fenchurch Street lines. The fares on these lines have been the same as those on the London Transport Board's lines for many years. The Applicants sought to have this assimilation abolished in 1964, but for the reasons which we gave in our decision in *In the matter of the London Fares (British Railways) Order 1963 and 1964 (1964 No. 3)* we refused to accede to that part of their application. In the present case Mr. Fay did not seriously argue that this assimilation should not be continued should we decide not to apply the scale set out in the Order of 1968 to the Applicants' London lines in general. We have therefore inserted in our Order provisions for applying to the Applicants' Fenchurch Street lines the scale applicable to the lines of the London Transport Board.

The draft Order contains a special definition of "journey" applicable to the provisions relating to maximum single and return fares. It was explained to us that this definition was

inserted in the draft Order in order to enable the Applicants to require passengers to re-book when changing from one of the Applicants' lines to another. Mr. Peatney said that the object of this was not to raise more revenue, but to reduce the Applicants' costs, though the effect would be that some passengers would have to pay more. During the hearing Mr. Fry informed us that upon his advice the Applicants contended that they already have power to require passengers to re-book at interchange stations without any authorisation from us. He therefore asked that the relevant paragraph should be drafted in exactly the same terms as the corresponding paragraph in the Order of 1966. We have, accordingly,

not included the definition of "journey" in our Order. The result is that by virtue of s.31 of the Interpretation Act 1889 the word "journey" in our Order has the same meaning as it has in the Act of 1962, which confers on us the power to make our Order. It is not for us to express any view as to whether the Applicants' contention regarding that meaning is right or wrong.

G. D. SQUIRE
T. B. ROSSON
R. C. MOORE

16th August 1968

LONDON FARES (BRITISH RAILWAYS) ORDER 1968

DAILY PROCEEDINGS

CORRECTIONS

FIRST DAY

Thursday, 9th July, 1968

- Page 1, column 1, line 16—for "by this application" read "on this application".
 Page 1, column 1, line 19—delete "produced by the Board".
 Page 1, column 1, line 23—for "appears" read "appear".
 Page 1, column 1, line 24—for "limitation" read "linear strand".
 Page 2, column 1, line 19—for "according" read "accordingly".
 Page 2, column 2, line 14—for "putting" read "put".
 Page 2, column 2, line 38—for "was" read "is".
 Page 2, column 2, line 41—for "that" read "those".
 Page 3, column 1, last line—for "one" read "ones".
 Page 5, column 1, line 28—for "unexhausted" read "unexhausted".
 Page 5, column 1, line 39—for "section" read "schedule".
 Page 6, column 1, line 37—for "railways' deficit" read "railways working deficit".
 Page 6, column 1, line 53—for "cost" read "after meeting all working costs".
 Page 6, column 2, line 30—for "39" read "69".
 Page 7, column 1, line 32—for "the" read "a".
 Page 7, column 2, line 51—for "of" read "on".
 Page 8, column 1, line 17—for "like" read "under".
 Page 8, column 2, line 52—for "this" read "it"; for "the main" read "a main".
 Page 9, column 1, line 33—for "Those" read "Other than".
 Page 9, column 2, line 45—for "put" read "kept".
 Page 10, column 1, line 9—for "column 1" read "column 4".
 Page 10, column 1, line 34—for "excluding" read "including"; delete "only".
 Page 11, column 1, lines 13 and 14—delete and substitute "a penny increase at 1 and 2 miles, and nothing from 3 to 11 miles, instead of the increases of up to 4d. shown in column 4 of JP 2".
 Page 11, column 1, lines 32 and 33—delete—the London/Tilbury/Southeast end of".
 Page 11, column 1, line 34—for "1968" read "the 1968 budget".
 Page 11, column 1, line 39—for "six" read "sixpenny".
 Page 11, column 1, line 48—for "which corroborates" read "corroborations".
 Page 11, column 1, lines 73 and 74—for "such as just what has been handed in now" read "shortly".
 Page 11, column 2, line 13—for "3" read "13".
 Page 11, column 2, line 20—for "the" read "train".
 Page 11, column 2, line 44—delete "coin".
 Page 12, column 1, line 57—for "when shown tickets at" read "related to".
 Page 13, column 2, line 26—for "have the right to ask" read "hope will be granted to us".
 Page 13, column 2, line 40—for "41,360" read "£41,360".
 Page 14, column 1, line 17—for "from" read "for".
 Page 14, column 1, line 18—for "from" read "for".
 Page 14, column 1, line 14—for "moment" read "movement".
 Page 14, column 1, line 41—for "that ultimatum" read "the ultimate aim".

SECOND DAY

Wednesday, 10th July, 1968

- Page 29, column 2, line 22—for "have" read "know".
 Page 29, column 2, line 23—for "is" add "losing".
 Page 30, column 1, line 56—for "at" read "in".
 Page 30, column 1, line 57—delete and substitute "a year we save £400 against the salary of a clerk and we can throw the machine".
 Page 36, column 1, line 18—insert "(Mr. Fry)".
 Page 37, column 1, line 67—for "reports" read "estimates".
 Page 38, column 1, line 42—for "and to" read "and".
 Page 38, column 1, line 43—delete and substitute "that the business as a whole pays its way. The consequences of that duty will be increased rather than".
 Page 39, column 1, line 73—for "division" read "revision".
 Page 39, column 1, line 74—delete "it was revised in March".

THIRD DAY

Thursday, 11th July, 1968

- Page 43, column 2, lines 15 and 16—for "way, insofar" read "way. Insofar".
 Page 43, column 2, line 46—for "increase, of" read "element of".
 Page 44, column 1, line 50—delete "but taking into account for the purposes".
 Page 44, column 1, line 51—delete "of this calculation, that".
 Page 44, column 1, line 61—for "in fact the charge" read "the fact of the charge".
 Page 44, column 1, line 62—for "capital figure" read "capital, the figure".
 Page 44, column 2, line 43—for "1966" read "1964".
 Page 44, column 2, line 51—for "1965" read "1964".
 Page 44, column 2, line 55—for "1965" read "1964".
 Page 46, column 1, line 50—for "so" read "but".
 Page 46, column 2, line 22—for "£0.7m" read "£0.07m".
 Page 48, column 1, line 12—for "figure" read "vigour".

FOURTH DAY

Friday, 12th July, 1968

- Page 60, column 1, line 23—for "31.4 per cent" read "£31.4m".
 Page 70, column 2, line 11—for "seats" read "receipts".

FIFTH DAY

Monday, 15th July, 1968

- Page 77, column 2, line 6—for "page 12 at letters 'C' to 'D'" read "page 46 column 2 lines 7 to 23".
 Page 78, column 1, line 18—after "19" add "per cent".
 Page 8, column 1, line 72—for "JP 9" read "JP 7".
 Page 82, line 1—add "JP 7".



THE TRANSPORT TRIBUNAL

THE LONDON FARES (BRITISH RAILWAYS) ORDER 1968

REASONS FOR DECISION

16th AUGUST 1968

AND
CORRECTIONS TO DAILY PROCEEDINGS
9th JULY 1968 TO 15th JULY 1968



LONDON: HER MAJESTY'S STATIONERY OFFICE
1968

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